Unlimited Security, Inc. *and* Federation of Police Security and Correction Officers—AFSPA. Case 11–CA–19129

November 7, 2002

DECISION AND ORDER

BY MEMBERS LIEBMAN, COWEN, AND BARTLETT

Upon a charge filed by the Federation of Police Security and Correction Officers—AFPSA on July 12, 2001,[1] and an amended charge filed on September 5, the General Counsel of the National Labor Relations Board issued a complaint on September 27, against Unlimited Security, Inc., the Respondent. The complaint alleges that the Respondent violated Section 8(a)(1) of the Act. Although properly served copies of the charge, the amended charge, and the complaint, the Respondent failed to file a timely answer.

On December 17, the General Counsel filed a Motion for Summary Judgment and a memorandum in support. On December 21, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the Motion for Summary Judgment should not be granted. Also on December 21, the Respondent filed a request to rescind the General Counsel's Motion for Summary Judgment. On January 11, 2002, the General Counsel filed an opposition to the Respondent's request to rescind.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days of service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the General Counsel's Motion for Summary Judgment disclose that on October 23, the Regional Attorney for Region 11 sent the Respondent a letter by certified mail advising that an answer had been due by October 11, and that if an appropriate answer were not received by close of business November 5, a Motion for Summary Judgment would be filed. The Respondent did not file an answer by November 5.

In its December 21 request to rescind the General Counsel's Motion for Summary Judgment, the Respondent contends:

> We believe that this motion is in error and the following documentation is being provided to support USI's contention that regarding this matter it has acted in good faith by timely providing all information requested [by] the NLRB, Region 11.
>
> Specifically, attached you will find information provided on August 9, 2001, pursuant to and consistent with an August 2, 2001 written request made by Region 11 through Investigator Earl P. Pfeffer, National Labor Relations Board.

The Respondent's August 9 submission to the Region and its December 21 submission to the Board were signed by the Respondent's executive director, James C. Holloway Jr. Thus, it could be argued that the Respondent is proceeding pro se, and should therefore be shown some leniency in its efforts to comply with procedural rules. See, e.g., *Mid-Wilshire Health Care Center*, 331 NLRB 1032, 1033 (2000). However, the Respondent's submissions reveal that it is not, in fact, proceeding pro se.

Both the Respondent's August 9 submission to the Region and its December 21 submission to the Board reflect that copies were sent to a person identified as "Ray Via, Esq." or "Ray Via," respectively. Moreover, both these submissions indicate that Mr. Via is in the Respondent's "Legal Department" or "Legal." Thus, it appears that the Respondent is a corporation of sufficient size to have a "Legal Department" and, indeed, that one of the attorneys in that department was responsible for monitoring the progress of this case. Under these circumstances, we conclude that the Respondent is not proceeding in this matter pro se, and the fact that the Respondent chose to have its submissions signed by its executive director does not change this fact. Accordingly, the Respondent is not entitled to the procedural leniency typically accorded to pro se litigants.

Viewed from this perspective, it is clear that the Respondent has failed to file a timely answer to the complaint without adequate justification, and that summary judgment is appropriate. In this regard, the Respondent's August 9 submission was not an answer to the complaint, which issued subsequently on September 27. Rather, the August 9 submission was a precomplaint statement of position in response to the investigation of the charge. The Board has consistently held that informal statements of position in response to a charge, such as the one the Respondent submitted prior to the complaint's issuance here, are insufficient to constitute answers to the complaint. *All American Fire Protection, Inc.*, 336 NLRB No. 64, slip op. at 2 & fn. 6 (2001); *Bricklayers Local 31*, 309 NLRB 970 (1992), enfd. 992 F.2d 1217 (6th Cir. 1993); *Wheeler Mfg. Corp.*, 296 NLRB 6 (1989). Therefore, we find that the Respondent's submission of August 9 does not constitute a timely answer to the complaint.

Although the Respondent's December 21 submission timely responded to the General Counsel's Motion for Summary Judgment and the Board's Notice to Show

[1] All dates hereafter are in 2001, unless otherwise noted.

Cause, the Board will not accept it as the answer to the complaint absent a showing of good cause for the failure to timely answer the complaint initially. See *All American Fire Protection*, supra, 336 NLRB No. 64, slip op. at 2; *Wheeler Mfg. Corp.*, supra, 296 NLRB at 6. In its request to rescind, the Respondent does not provide an explanation for its failure to file a timely answer to the complaint. Rather, the Respondent states only that it has acted in good faith by providing, on August 9, all information requested by the Region.[2] We find that statement insufficient to constitute good cause for the Respondent's failure to file a timely answer to the complaint. We therefore decline to accept the Respondent's December 21 submission as the answer to the complaint. Accordingly, in the absence of good cause for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.[3]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Washington, D.C. corporation with facilities located in Florence and Columbia, South Carolina, has been engaged in providing security services to the United States Government at various facilities, including the F.B.I. Building and Strom Thurmond Federal Building. During the 12-month period ending September 27, 2001, which is representative of all material times, the Respondent provided services valued in excess of $50,000 to the United States Government in various states throughout the United States. We find that the Respondent has a substantial impact on the national defense and that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

At all material times, James C. Holloway Jr. has held the position of executive director of the Respondent, has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act, and has been an agent of the Respondent within the meaning of Section 2(13) of the Act.

About June 22, 2001, the Respondent discharged its employee Johnsie Garcia, and thereafter failed and refused to reinstate her, because she engaged in concerted activities for the purpose of collective bargaining or other mutual aid or protection, and in order to discourage employees from engaging in such concerted activities.

CONCLUSIONS OF LAW

1. By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, thereby violating Section 8(a)(1) of the Act.

2. By the conduct described above, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(1) of the Act by discharging employee Johnsie Garcia, we shall order the Respondent to offer her full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed. We also shall order the Respondent to make Garcia whole for any loss of earnings and other benefits suffered as a result of the discharge. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall be required to remove from its files any reference to Garcia's discharge, and to notify her in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Unlimited Security, Inc., Washington, D.C., its officers, agents, successors, and assigns, shall

Cease and desist from

(a) Discharging or otherwise discriminating against employees because they engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or in order to discourage employees from engaging in such concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Johnsie Garcia full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

(b) Make Johnsie Garcia whole for any loss of earnings and other benefits suffered as a result of her unlaw-

[2] We note that the Respondent waited until December 21, long after the November 5 deadline for filing an answer, to resubmit its position statement, together with its request to rescind the General Counsel's Motion for Summary Judgment.

[3] Assuming arguendo that the Respondent was acting pro se, we find that summary judgment for the General Counsel would be appropriate even under the standards applicable to pro se respondents. See *All American Fire Protection*, supra, 336 NLRB No. 64, slip op. at 2 fn. 6; *Black's Railroad Transit Service*, 334 NLRB No. 49, slip op. at 1 (2001).

Member Cowen finds it unnecessary to reach this issue.

ful discharge, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge of Johnsie Garcia, and within 3 days thereafter, notify her in writing that this has been done and that her discharge will not be used against her in any way.

(d) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place to be designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days of service by Region 11, post at its facilities in Florence and Columbia, South Carolina, including the F.B.I. Building and Strom Thurmond Federal Building, copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 22, 2001.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply.

Dated, Washington, D.C. November 7, 2002

Wilma B. Liebman, Member

William B. Cowen, Member

Michael J. Bartlett, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[4] If this Order is enforced by a judgment of the United States court of appeals, the words in the notice reading "Posted By Order of The National Labor Relations Board" Shall Read "Posted Pursuant to a Judgment of The United States Court of Appeals Enforcing An Order of The National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discharge or otherwise discriminate against any of you because you engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, or in order to discourage any of you from engaging in such concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Johnsie Garcia full reinstatement to her former job, or if that job no longer exists, to a substantially equivalent position, without prejudice to her seniority or any other rights or privileges previously enjoyed.

WE WILL make Johnsie Garcia whole for any loss of earnings and other benefits suffered as a result of her unlawful discharge, less net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to our unlawful discharge of Johnsie Garcia, and WE WILL, within 3 days thereafter, notify her in writing that this has been done and that her discharge will not be used against her in any way.

UNLIMITED SECURITY, INC.